IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.1511 of 2006

Juber Abdul Vahid Kureshi — Petitioner
Vs.
The State of Maharashtra & ors. — Respondents

Mr.Vijay Gharat for petitioner.
Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 10, 2007.

ORAL JUDGMENT:

1. This petition filed under Article 227 of the Constitution impugns the order of externment dated 17/2/2006 passed by the Deputy Commissioner of Police, Special Branch, Panvel, New Mumbai under Section 56 of the Bombay Police Act, 1951 and duly confirmed by the lower Appellate Authority i.e. the Principal Secretary (Appeals), Government of Maharashtra. The petitioner has been externed for a period of two years from the date of the impugned order and he has thus already suffered the externment period of one year and six months.

2. The learned counsel for the petitioner has referred to the show cause notice dated 23/11/2005 issued by the Asst. Commissioner of Police, Panvel

Division, Panvel and addressed to the petitioner and the said show cause notice was based on the following CRs:

(i) C.R. No.318/2004 for the offences punishable under Sections 454, 457 and 380 of IPC.

(ii) C.R. No.45/2005 for the offences punishable under Sections 454, 457 and 380 of IPC.

(iii) C.R. No.46/2005 for the offences punishable under Sections 454, 457 and 380 of IPC.

(iv) C.R. No.47/2005 for the offences punishable under Sections 399 and 402 of IPC.

All these complaints had originated from the alleged incidents within the territorial limits of Panvel town. The show cause notice as well as the impugned externment order did not refer to any in-camera statements of witnesses recorded indicating therein that there was hardly anybody who was willing to come

forward and complain against the petitioner openly regarding his alleged criminal activities of threats, spreading terror and scare in the minds of the citizens. However, when he had taken up the very same grounds in his appeal before the lower Appellate Authority i.e. regarding the absence of in-camera statements recorded deposing against him, the lower Appellate Authority stated that on examining the record she found three such in-camera statements. Mr.Gharat, therefore, submitted that when the externing authority did not refer to any in-camera statements against the petitioner, how the lower Appellate Authority could notice such statements. As per Mr. Gharat no such statements were recorded and the observations made by the lower Appellate Authority in that regard were far from facts and not supported by the record.

3. There is no doubt that the impugned order of externment has been passed under Section 56(1)(b) of the Bombay Police Act, 1951 which indicates that there were reasonable grounds for believing that the petitioner was engaged or was about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII,

XVI or XVII of the Indian Penal Code or in the abetment of any such offence and in the opinion of such officer there were no witnesses willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property. To support the order of externment passed on such ground, it is imperative that the Competent Authority before passing the order of externment went through such in-camera statements recorded and duly verified and reached to the conclusion that the witnesses were apprehensive to come in the open and depose against the petitioner / externee. It appears that such a ground was specifically taken up by the petitioner before the lower Appellate Authority and, therefore, to rebut the same she stated in her order dated 13/6/2006 that there were three in-camera statements recorded and relied upon. As the challenge raised by the petitioner to the order of externment revolved mainly around this main issue, Mr. Shitole, the learned APP sought time to place before me the original record and today he stated that the record does not support the findings recorded by the lower Appellate Authority. I have verified the record and the statement made by Mr. Shitole has to be

accepted. It is thus clear that no in-camera statements were recorded by the concerned Police Station against the petitioner and thus one of the conditions set out under Section 56(1)(b) of the Bombay Police Act is not satisfied. Even otherwise, as noted earlier, the petitioner has already suffered the externment period of one year and six months and there is no reason to allow the impugned externment order to remain in force any more.

4. Hence the petition is allowed and the externment order dated 17/2/2006 passed by the Deputy Commissioner of Police, Panvel Division, Navi Mumbai as well as the order dated 13/6/2006 passed by the lower Appellate Authority are hereby quashed and set aside. Rule is made absolute accordingly.

(B.H.MARL